FILED
APR 29 1957

In the

Supreme Court of the United States

October Term 1957

No. 950

ELIZA JANE DOBY AND J. LILLIAN DOBY,
Petitioners

v.

R. L. BROWN, JR., JOHN B. MORRIS, JR., J. HEATH MORROW, TED P. FURR, CHARLES W. PICKLER, AND H. WELLS ROGERS, TRUSTEES OF THE ALBEMARLE CITY ADMINISTRATIVE UNIT, AND CLAUD GRIGG, SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE ALBEMARLE CITY ADMINISTRATIVE UNIT,
Respondents

Petition for Writ of Certiorari to the Supreme Court of North Carolina

FRANK THOMAS MILLER, JR.
Law Building
Charlotte, North Carolina
Counsel for Petitioners

O. W. CLAYTON
Law Building
Charlotte, North Carolina
Of Counsel

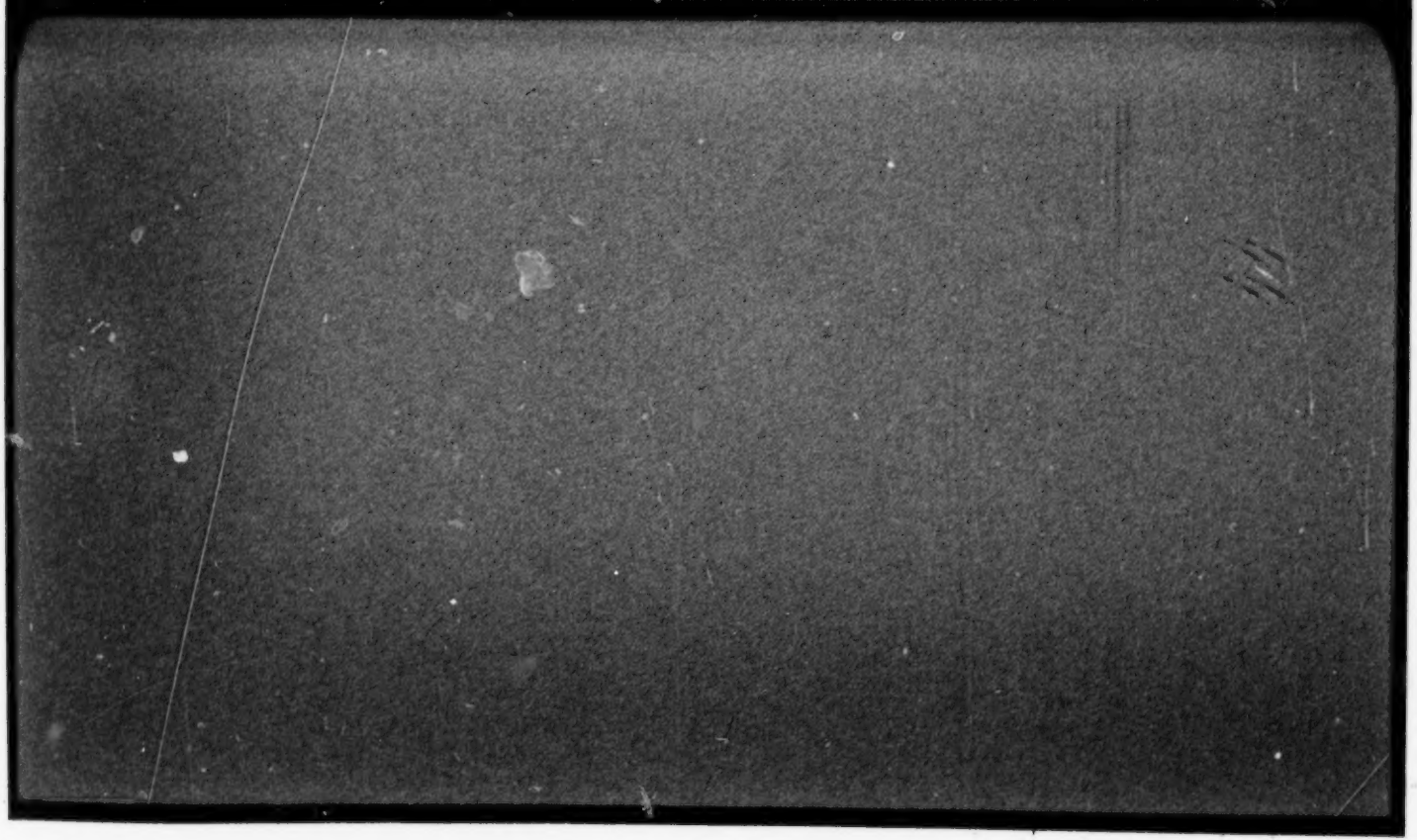

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Constitutional Provisions and Statutes Involved	3
Statement of the Case	4
Reasons for Allowance of the Writ	6
Conclusion	17

Appendix:

A. Opinion of the Supreme Court of North Carolina, Entered November 7, 1956	1
Judgment of the Supreme Court of North Carolina, Entered November 7, 1956	2
B. Petition for Rehearing Denied	3
C. General Statutes of North Carolina, Section 115-85	3
D. Amendment to General Statutes, Section 115-85, by Chapter 1335 of the 1955 General Assembly	4
E. Chapter 1162 of the 1953 Session Laws of the General Assembly of North Carolina	5
F. Section 17, Article 2, of Chapter 40 of the General Statutes of North Carolina	6
G. Section 2, Article IX, of the Constitution of North Carolina	7
H. Section 2, Chapter 115, of the General Statutes of North Carolina	7

TABLE OF CITATIONS

Cases

Page

Abernathy v. Railroad, 150 N. C. 97, 63 S. E. 180 9

Bank v. Hotel Co., 147 N. C. 594 9

Board of Education v. Allen, 243 N. C. 520 ..... 7, 8

Brown v. Board of Education, 347 U. S. 483, 394 U. S. 294 ..... 14, 15, 16

Collins v. Highway Commission, 237 N. C. 277 ..... 8, 10

Constantian v. Anson County, 244 N. C. 221 14

Gore v. Columbus County, 232 N. C. 636 17

Crampton v. Zabriskie, 101 U. S. 601 16

Eliza Jane Doby, et al v. R. L. Brown, Jr., et als, Trustees, 244 N. C. 746, 94 S. E. 2d 895 2

Gatling v. Highway Commission, 245 N. C. 66 10

Parker v. Anson County, 237 N. C. 76 16

Plessy v. Ferguson, 163 U. S. 357 15

Railroad v. Railroad, 148 N. C. 59, 61 S. E. 683 9

Selma v. Nobles, 183 N. C. 322 8

Shelley v. Kraemer, 334 U. S. 1(10), 92 L. ed. 1161 (1179) 10

Waldrop v. Hodges, 230 N. C. 370 17

Constitutional Provisions

Federal:

United States Constitution, Amendment 14, Section 1 ..... 2, 3, 7, 8, 10, 17

State:

Constitution of North Carolina, Article IX, Section 2 ..... 4, 12, 16

State Statutes

Page

General Statutes of North Carolina, Section 2, Chap. 115 .... 4, 13, 16

General Statutes of North Carolina, Section 17, Article 2 of Chap. 40 ..... 3, 6, 8, 9, 10

General Statutes of North Carolina, Section 40-16 9

General Statutes of North Carolina, Section 40-19 9

General Statutes of North Carolina, Section 115-85 ..... 3, 4, 6, 7

General Statutes of North Carolina, Section 115-125 7

1953 Session Laws of North Carolina, Chap. 1162 .. 3, 12, 13, 15, 16

1955 Session Laws of North Carolina, Chap. 1335 ..... 3, 6, 7

Federal Statutes

Title 28 U. S. C. A., Section 1257(3) 2

In the

Supreme Court of the United States

October Term 1957

No. ____

ELIZA JANE DOBY AND J. LILLIAN DOBY,
Petitioners

v.

R. L. BROWN, JR., JOHN B. MORRIS, JR., J. HEATH MORROW, TED P. FURR, CHARLES W. PICKLER, AND H. WELLS ROGERS, TRUSTEES OF THE ALBEMARLE CITY ADMINISTRATIVE UNIT, AND CLAUD GRIGG, SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE ALBEMARLE CITY ADMINISTRATIVE UNIT,
Respondents

Petition for Writ of Certiorari to the Supreme Court of North Carolina

---

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Eliza Jane Doby and J. Lillian Doby, the petitioners herein, pray that a writ of certiorari be issued to review the final judgment of the Supreme Court of the State of North Carolina affirming the judgment of the Superior Court of Stanly County, North Carolina, authorizing the taking of certain real estate of the petitioners in a purported condemnation proceeding.

OPINIONS BELOW

The opinion of the Supreme Court of North Carolina is reported in 244 N. C. at 746, 94 S. E. 2d 895. Said opinion appears as Appendix A to this Petition. The judgment and opinion of the Superior Court of Stanly County is unreported, but appears at pages 49-54 of the record as printed for the use of the Supreme Court of North Carolina on the appeal of this case.*

JURISDICTION

The judgment sought to be reviewed was entered by the Supreme Court of North Carolina on November 7, 1956. The opinion and judgment appear at pages 1 and 2, Appendix A to this Petition. The petitioners in apt time filed a petition for a rehearing, which was denied on January 30, 1957, and the order denying the petition to rehear appears at page 3, Appendix B to this Petition. The jurisdiction of this Court to review by writ of certiorari the judgment in question is conferred by Title 28, United States Code, Section 1257(3).

QUESTIONS PRESENTED

1. Where a State statute was amended to provide that the land owners should be given a timely notice of the meeting of appraisers, and the appraisers meet and make the appraisal without any notice whatever to the land owners, and the Courts of the State ignore the amendment to the statute, does this do violence to the due process and equal protection clauses of the Fourteenth Amendment?

---

* When copies of the record as printed for use of the Supreme Court of North Carolina are referred to, references herein are to the pages of said record.

2. Where bonds are voted by a school district to provide money for buying sites and erecting school buildings thereon, pursuant to a statute enacted to provide school funds by bond issues, at a time when only segregated schools could be operated, will the use of the bond money to pay the condemnation price of the petitioners' land, to be used for integrated schools, constitute the taking of petitioners' land in violation of the due process and equal protection clauses of the Fourteenth Amendment?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves constitutional provisions, statutes and amendments to statutes, as follows:

1. United States Constitution, Amendment 14, Section 1.

2. General Statutes of North Carolina, Section 115-85, Appendix C herein.

3. Chapter 1335 of the Session Laws of the 1955 General Assembly of North Carolina, which amended General Statutes of North Carolina, Section 115-85. The amendment appears herein as Appendix D.*

4. Chapter 1162 of the 1953 Session Laws of the General Assembly of North Carolina, Appendix E to this Petition.

5. Section 17, Article 2, of Chapter 40 of the General Statutes of North Carolina, Appendix F hereto.

---

*The entire school law of North Carolina was rewritten by the 1955 General Assembly, and former Section 115-85 was renumbered as Section 115-125. See General Statutes of North Carolina, 1955 Cumulative Supplement, Chapter 115.

6. Article IX, Section 2, of the Constitution of North Carolina, Appendix G hereto.

7. Chapter 115, Section 2, of the General Statutes of North Carolina, Appendix H hereto.

STATEMENT OF THE CASE

1. The petitioners in the State Court, the appellees herein, are the Trustees of the Albemarle City Administrative Unit, a school district in Stanly County, North Carolina, and is a corporate body under the laws of North Carolina (Judgment, Record 50 and 51), and as such had a notice issued and served on the petitioners herein (Respondents in the State Court), pursuant to G. S.,* Section 115-85 (now 115-125), notifying them that said corporate body (The Board of Trustees of said School Unit, hereinafter called the Board) would proceed to condemn a tract of land, containing about 27 acres, belonging to these petitioners, and lying and being within the City Limits of the City of Albemarle (Record, 1-10). Subsequent thereto a Special Proceeding was instituted by the Board against the petitioners herein, and a Summons was served on them by publication (R. 2), although they are citizens and residents of the State of North Carolina (R. 4) for the purpose of taking the land of the petitioners.

On November 9, 1955, the Clerk of the Superior Court appointed appraisers, but no date was named in the Order appointing the appraisers for them to meet and assess the compensation to be paid the petitioners herein. (Addendum to Record, 1-8). No notice of any meeting of the appraisers was given the petitioners (Paragraph 14 of Stipulations entered into at a pre-trial hearing, R. 38-45).

---

*The initials G. S. are used to designate the General Statutes of North Carolina.

In their "Exceptions to Report of Appraisers," the petitioners made as one of their exceptions the fact that they were not given any notice whatever of the time and place of any meeting of the appraisers (See Paragraph 4 of said Exceptions, R. 23-33). The Judgment of the Clerk of the Superior Court confirming the Report of the Appraisers (R. 33-37) was entered on December 13, 1955, to which the petitioners filed Exceptions (R. 37-38), and in Paragraph 1 thereof, the petitioners excepted to the failure of the appraisers to give them any notice of any meeting of the appraisers (R. 37), and preserved their exception to the order of the trial judge in overruling this exception, and others (R. 47-48).

2. The Board made a determination "that the *only suitable site* for" a new senior high school plant is the tract of land of the petitioners above-mentioned (See Paragraph 5 of Stipulations, R. 41). (Emphasis supplied). The petitioners attacked this finding both in their answer (R. 11) and in their Exceptions to the Report of the Appraisers (R. 24) as an unreasonable, capricious and arbitrary decision on the part of the Board. The petitioners filed Exceptions to the rulings of the Clerk of the Superior Court in confirming the Report of the Appraisers (R. 37-38), and Exception two thereof (R. 38) was to the refusal of the Clerk to allow the petitioners to offer evidence that there were other suitable sites available. In the Pre-trial Stipulations, the Superior Court Judge sustained the ruling of the Clerk (R. 38-45) and held "that the only issuable fact now being the question of damages for the lands appropriated upon a verdict of the jury," to which the petitioners duly excepted (R. 47-48).

The petitioners contended and offered evidence tending to show that the value of the land in question was $150,000 (R. 58), but the jury awarded them only $40,000 (R. 50).

3. The petitioners herein pleaded in both their answer (Paragraphs 6, 7, 8, 9 and 10 — R. 14-16) and in their Exceptions to the Report of the Appraisers (Paragraphs E, F, G, H and I — R. 29-31) that the money which would be used from the bonds voted to pay for the land of the petitioners was voted for the purpose of segregated schools, and that it would be unlawful to use said money for schools exclusively for either the white or the colored children in the district. The trial court refused to allow the petitioners to present this defense (R. 44), to which the petitioners duly excepted (R. 47-48).

The money having arisen from a bond issue voted to buy land for and the erection of school buildings thereon for the operation of segregated schools, it will be unlawful and wrongful to use said money for sites and buildings for integrated schools, thereby breaking faith with the voters and the contractual obligations they assumed in voting for said bond issue.

REASONS FOR ALLOWANCE OF THE WRIT

1. G. S. 115-85 was amended by the General Assembly of North Carolina during its 1955 session. The amendment was ratified and became effective on May 26, 1955 (Appendix D). The amendment provides that Article 2 of Chapter 40 of the General Statutes of North Carolina shall apply to condemnation proceedings under G. S. 115-85 (now 115-125) to the extent that G. S. 115-85 does not set forth the procedure to be followed, and this section contains no requirement that the appraisers shall give notice to landowner whose land is sought to be condemned. However, Section 17 of G. S. 40, Article 2, provides that whenever the appraisers "meet, except by the appointment of the court or pursuant to adjournment, they shall cause ten days' notice

of such meeting to be given to the parties who are to be affected by their proceedings, or their attorney or agent" (Appendix F). The appraisers were appointed on November 9, 1955, many months after the enactment and ratification of the amendment to G. S. 115-85, and hence the appraisers were bound by the amendment and should have given the petitioners notice of their meeting to value and appraise the land and assess the damages. If the statute did not expressly provide for the giving of ten days' notice of any such meeting, it might not be sound to take the position that the petitioners were denied due process of law and equal protection of the law, under the Fourteenth Amendment, when no notice was given them as required by the statute. The Supreme Court of North Carolina ignored this salutary provision, which was presented to it under proper exceptions, as shown in the Statement of the Case, above.

In finding that there was no error in this case (See Appendix A), the Supreme Court of North Carolina cited only one case, which is *Board of Education* v. *Allen*, 243 N. C. 520, an examination of which discloses that when the notice was given the landowners, pursuant to G. S. 115-125, the landowners, through their counsel, made a special appearance and moved to dismiss the proceeding. From the denial of this motion the landowners appealed to the Supreme Court of North Carolina, which held that the motion to dismiss was without merit and the appeal was premature. In its opinion, the North Carolina Supreme Court cited authorities for its statement that the advisability of taking property for public school use "is a political and administrative measure of which the defendants are not even entitled to notice or to be heard, *except as provided by statute*" (emphasis supplied). Another North Carolina case is quoted with approval as follows:

> ". . . No appeal lies until the final report of the commissioners (here appraisers) comes in, when, upon exceptions filed, the entire record is sent to the Superior Court, where all the exceptions . . . may be then presented."

In *Board of Education* v. *Allen*, *supra*, the Court quotes with approval from *Selma* v. *Nobles*, 183 N. C. 322, as follows:

> "As to the procedure in a case of this kind, our decisions are to the effect that notwithstanding the appearance of issuable matter in the pleadings, it is the duty of the clerk, in the first instance, to pass upon all disputed questions presented in the record, and go on to the assessment of the damages through commissioners (or appraisers, as here) duly appointed, and allowing the parties, by exceptions, to raise any questions of law or fact issuable or otherwise to be considered on appeal from him in his award of the damages as provided by law."

The petitioners herein presented by exceptions to the Report of the Appraisers' questions of law and issuable facts, all of which were disregarded, overruled, and denied by both the Clerk of the Superior Court and the trial judge on appeal to him, except the question of compensation, as shown in the Statement of the Case, above.

Such action on the part of the trial judge, approved by the Supreme Court of North Carolina, constitutes a denial of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

In the case of *Collins* v. *Highway Commission*, 237 N. C. 277, the Supreme Court of North Carolina, citing many cases, held that under the provisions of G. S. 40-17 (Appendix F), the respondents in a condemnation proceeding were

entitled to notice of the meeting of the commissioners appointed to make the appraisal of the value of the land. This case goes thoroughly into many phases of condemnation proceedings, notice, hearing, etc., and with reference to the particular subject now under discussion, attention is called to one paragraph of that case, as follows:

> "Some additional rules respecting procedural notice apply to condemnation proceedings. G. S. 40-16 provides that when the answer in a condemnation proceeding challenges the right of the petitioner to maintain the proceedings, the clerk of the Superior Court must 'hear the proofs and allegations of the parties' and pass on the validity of the challenge before he makes any order for the appointment of commissioners. Abernathy v. Railroad, 150 N. C. 97, 63 S. E. 180; Railroad v. Railroad, 148 N. C. 59, 61 S. E. 683. The implication is plain that the clerk is to hold the hearing on the challenge only after notice to the parties. Bank v. Hotel Co., supra. G. S. 40-17 specifies that the commissioners in a condemnation proceeding are to give the parties or their attorneys ten days notice of their meetings, except when meeting under the appointment of the court or in an adjourned meeting. When this statutory provision is obeyed by the commissioners, the parties to the proceeding receive notice of the filing of their report. This is necessarily so because the statute requires the commissioners to give the parties or their attorneys notice of the meeting at which the report is adopted and ordered filed. G. S. 40-19 stipulates that within twenty days after the filing of the commissioners' report, any party to the condemnation proceeding 'may file exceptions to said report, and upon the determination of the same by the court, either party to the proceedings may appeal to the court at term, and thence, after judgment, to the Supreme Court.' The implication is indisputable that the clerk is to make his determination on the exceptions only after notice and an opportunity to be heard thereon is given the parties."

By disregarding, overruling, rejecting, and failing to require compliance with the statutory provisions of its own State, it can not be denied that the Supreme Court of North Carolina brought about the deprivation of the property of the petitioners herein, contrary to the due process and the equal protection clauses of the Fourteenth Amendment. *Shelley* v. *Kraemer*, 334 U. S. 1(10), 92 L. ed. 1161 (1179).

As shown in the case of *Collins* v. *Highway Commission*, *supra*, the Supreme Court of North Carolina fully recognized and enforced the statutory provisions of that State with respect to the requirement that notice of the meeting of the appraisers be given to the landowners whose land the State, or one of its agencies, is seeking to condemn. This salutary provision was ignored, disregarded, overruled, and denied as to the petitioners herein in the present case. However, in the case of *Gatling* v. *Highway Commission*, 245 N. C. 66, the Supreme Court of North Carolina adhered to the provisions of Chapter 40, Article 2, of the General Statutes of North Carolina, particularly G. S. 40-17 (Appendix F).

2. Following the Pre-trial Stipulations (R. 38-44) the trial judge in the Superior Court ruled that the only issuable fact was "the question of damages for the land appropriated upon a verdict of the jury," and he thereupon ruled that he would not permit the petitioners herein to offer evidence on the matters set up in the Further Answer and Defense with the exception of Paragraphs 12 and 13 "of said Further Answer and Defense which deal with the question of damages" (R. 44 and 45), thereby effectively depriving these petitioners of any opportunity to offer evidence to show that there are many other sites within the Albemarle City Administrative Unit suitable for a high school plant. The petitioners herein filed Exceptions to the Report of the

Appraisers (R. 23-33), and in Paragraph 6 thereof (R. 24), it was alleged that "the action of the petitioners (the Board) in making a determination that the tract of land" of these petitioners "is the *only* suitable site for a senior high school plant within the boundaries of the Albemarle City Administrative Unit . . . was and is an unreasonable, capricious and arbitrary decision on the part of" the Board, "for the reason that there are other suitable sites for a high school plant in said Administrative Unit." The trial judge overruled this exception in the document entitled "Stipulations" (R. 39), and this ruling was approved by the Supreme Court of North Carolina.

The petitioners herein filed Exceptions (R. 37) to the Judgment of the Clerk of the Superior Court of Stanly County confirming the Report of the Appraisers (R. 33). Exception two was as follows:

> "The respondents (the petitioners herein) offered to show by a witness that other suitable sites were available for a new high school plant, to which the petitioners (the Board) objected and the objection was sustained and the respondents excepted."

The trial judge overruled all of the exceptions of the petitioners herein to the Judgment of the Clerk confirming the Report of the Appraisers; thereby the trial judge overruled Exception two, above quoted (R. 39).

Where there is an arbitrary use of discretion, the Court should interfere and review the matter.

Without hearing any evidence on the question of the unreasonable, arbitrary and capricious conduct of the Board in selecting the land of these petitioners as the *only* suitable site, the trial judge, and later the Supreme Court of North Carolina, condoned the deprivation of the property of the petitioners without due process of law and without the equal

protection of the law, as afforded by the Fourteenth Amendment to the Constitution of the United States. Under the decision of the Supreme Court of North Carolina (Appendix A), the Board might have selected several blocks of business property or several blocks of built-up residential property as the *only* suitable site, and the owners of such properties would have been helpless to prevent the Board from condemning and taking such property, or of even showing the unreasonable, arbitrary and capricious conduct of the Board.

The star witness of the Board testified that there are other suitable sites for a school plant within the Albemarle City Administrative Unit, and that some consideration was given to some of these others sites (R. 68-69).

The best way to show that the Board was unreasonable, arbitrary and capricious in selecting the land of the petitioners as the *only* suitable site was to show that there are many other suitable sites within the School District, and when the petitioners were denied this right, they were denied due process of law and equal protection of the law as implicit in the Fourteenth Amendment.

3. One of the defenses set up by the petitioners in this case is that the expenditure of the bond money now for the erection of school plants, and the acquisition of sites therefor, that must or may be used for a mixed school, will be for a purpose violating the contractual obligations of the freeholders in voting favorably for said bond issue.

When Chapter 1162 of the Session Laws of 1953 was enacted by the General Assembly of North Carolina (Appendix E), the Constitution of the State of North Carolina contained a provision that "the children of the white race and the children of the colored race shall be taught in separate public schools" (Appendix G), and at that time Chap-

ter 115, Section 2, of the General Statutes of North Carolina provided that "The children of the white race and the children of the colored race shall be taught in separate public schools. . . ." (Appendix H).

Hence, at the time of the enactment of said Chapter 1162 of the Session Laws of 1953, at the time of ordering said special election, and at the time that notice of said special election was given, which was done on April 20, 1954, the foregoing constitutional and statutory provisions were in full force and effect in North Carolina (R. 46).

The ordering of said special election, the giving notice thereof, the bonds voted therein, the sale of any of said bonds, and any and all money arising as the proceeds of the sale of any of said bonds, all were actions done and performed pursuant to and in accordance with the provisions of Chapter 1162 of the Session Laws of 1953 (R. 46).

That everyone is presumed to know the law is axiomatic, and it must be conclusively presumed that when the voters of the Albemarle City Administrative Unit voted for the bond issue on June 8, 1954, they knew of the enactment of Chapter 1162 of the Session Laws of 1953, and that said election was called, conducted and held pursuant to the provisions of that chapter, and that the bonds voted in said election could not be used for the purchase of sites or the erection of school buildings thereon for integrated public schools in North Carolina.

The election was called and held, and the bonds voted for only such schools as could have been lawfully operated in the State of North Carolina at the time of the enactment of Chapter 1162 of the Session Laws of 1953, and at that time only segregated schools could be operated in North Carolina. No other understanding could have been or was contemplated by the voters when they voted in favor of said bond issue on June 8, 1954 (R. 47).

Although the Supreme Court of North Carolina did not deign to discuss this defense, or any of the others presented, in its decision of this case (Appendix A), nevertheless it had decided the case of *Constantian* v. *Anson County,* 244 N. C. 221, on June 6, 1956, in which it said:

> "Moreover, in respect of a state public school system, nothing in the Brown case requires that children of different races be taught in the same schools. The doctrine therein declared, to be put into effect in specific cases 'with deliberate speed' as conditions may warrant, is that no child, whatever his race, may be excluded from attending the school of his choice solely on the basis of race. If so excluded by the state or a state agency, he may assert his constitutional rights under the equal protection clause of the Fourteenth Amendment as interpreted in the Brown case."

In their brief filed in the Supreme Court of North Carolina in this case, counsel for the petitioners suggested "that the decision in the *Anson County* case on the particular point involved in the discussion of Exception three (R. 47) should not be considered authoritative."

It is felt that the Supreme Court of North Carolina in its decision in the *Anson County* case, *supra,* took a much too narrow view of the decisions of the Supreme Court of the United States in the "Segregation Cases," and counsel for the petitioners argued in their brief that

> "This question should not be decided on the narrow assumption that the Brown case, 347 U. S. 483, as implemented in the Brown case, 349 U. S. 294, means only 'that no child, whatever his race, may be excluded from attending the school of his choice solely on the basis of race.' To be sure, this is true, but there is more in those decisions than just that. Apparently, those decisions have decided the question in plain and unequivo-

> cal language, but if not, it is certainly implicit in them, as a logical and inevitable conclusion, that segregation is now abolished in every school district in the Union. Certainly no one believes that the authorities in North Carolina must or will force the white and Negro children to attend mixed schools. That is not where the force will be applied. It will be applied, according to the directions of the Supreme Court of the United States, by the Federal District Courts in the first instance. If white and Negro children live in the same school district, and they do in almost every community in North Carolina, the Federal Courts can and will force them to attend the same public school."

In the *Brown* case, *supra*, this Court made it crystal clear that it was dealing with segregation in its broader aspects and not merely with isolated or specific cases. In those cases, the "separate but equal" doctrine in the field of education was abolished, thus overruling *Plessy* v. *Ferguson* (163 U. S. 357), and many other cases of like import.

The Board has "admitted that it is its purpose to pay the value at which said lands are determined in said condemnation proceeding from money derived from the sale of said bonds" (R. 17), meaning the bonds authorized by the special election held under and in accordance with the provisions of Chapter 1162 of the 1953 Session Laws of the General Assembly of North Carolina (Appendix E).

The Board is endeavoring to condemn lands owned by the petitioners under and pursuant to the authority of Chapter 1162 of the 1953 Session Laws of the General Assembly of North Carolina (Appendix E), and there can be no question but that an election held thereunder for voting bonds for use in buying land and the erection of school buildings thereon was for the purpose of segregated schools, the only kind that could be legally operated in North Carolina at that

time. And there can be no question but that the decision of the Supreme Court of the United States in the case of *Brown* v. *Board of Education*, 347 U. S. 483, rendered Chapter 1162, *supra*, and any and all actions taken pursuant thereto, unconstitutional and void, and also rendered unconstitutional and void Article 9, Section 2, of the Constitution of North Carolina (Appendix G), as well as Section 2 of Chapter 115 of the General Statutes of North Carolina (Appendix H), insofar as these provisions required separate schools for the races.

Although the petitioners are residents of Davidson County, North Carolina (R. 40, paragraph 4(3)), they are taxpayers in the adjoining County of Stanly, in which the tract of land lies which the Board is seeking to condemn. As such taxpayers, the petitioners have a right "to invoke the interposition of equity to prevent an illegal disposition of the monies of the county or the illegal creation of a debt which they in common with other property holders of the county may otherwise be compelled to pay." (*Crampton* v. *Zabriskie*, 101 U. S. 601.)

In the case of *Parker* v. *Anson County*, 237 N. C. 76, the local authorities submitted to the freeholders in a special election the question of the issue of bonds for school purposes. The plans contemplated the erection of a new high school in the northwestern section of the county and the enlargement of the high school in Wadesboro, a town in Anson County. After the approval of the bond issue by the voters, the local authorities decided to abandon the project for the erection of a new high school in the northwestern section of the county. In its opinion in this case, the Supreme Court of North Carolina said:

> ". . . Both projects were incorporated in the bond resolution. Signs were erected on the site selected for

> the new high school before the election so that the electors might be fully advised as to its proposed location. The project for a new high school was submitted to and approved by the voters. Fair play demands that defendants keep faith with the electors and use the proceeds for the purpose for which the bonds were authorized."

To the same effect are the cases of *Waldrop* v. *Hodges*, 230 N. C. 370, and *Gore* v. *Columbus County*, 232 N. C. 636.

Perhaps this point, standing alone, is insufficient to invoke the doctrine of the deprivation of the property of the petitioners without due process of law and the equal protection of the laws, as provided by the Fourteenth Amendment to the Constitution of the United States, but when it is added to the other two points, hereinbefore discussed, the overwhelming need for the administration of justice in preserving the rights of the petitioners cries out in loud and stentorian tones.

CONCLUSION

Wherefore, for the reasons hereinbefore stated, it is respectfully submitted that this Petition for a Writ of Certiorari should be allowed.

FRANK THOMAS MILLER, JR.
Law Building
Charlotte, North Carolina
Counsel for Petitioners

SEDBERRY, CLAYTON & SANDERS
Charlotte, North Carolina
Of Counsel